IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL APPLICATION NO. 2030 OF 2004

IN

WRIT PETITION NO. 3329 OF 2002

NARAYAN JANARDHAN NARVEKAR .. PETITIONER

Vs.

DNYANDEO SABAJI NAIK & ANR. .. RESPONDENTS

Mr. Suresh Rajeshwar i/b Lega Apex for petitioner

Mr. V.Y. Sanglikar for respondents

CORAM:-SMT. RANJANA DESAI, J.

DATED:-23-3-2005

P.C.

This civil application is filed by the petitioner/original plaintiff in L. E. & C Suit No. 198/242 of 1984. The suit was filed for a decree of eviction. The suit was decreed on 15/9/1999.

2. It appears that on 10/1/02 the Appellate Bench of Small Causes Court

passed an order in Appeal No. 613 of 1999 filed by original defendants 1 and 2, by which, judgment and decree passed by the Single Judge of the Small Causes Court dated 15/9/99 was set asaide. Plaint in the suit was ordered to be returned to the plaintiff for being presented to the proper court under Order VII Rule 10 of the Code of Civil Procedure ("the Code" for short). The court observed that plaintiff was at liberty to move the court under Order VII Rule 10 (2) A of the Code in that regard within 60 days from the date of the order. The petitioner challenged the said order by preferring Writ Petition No. 3329 of 2002. That writ petiton was dismissed by this court on 24th June, 2002. By the time, time of 60 days granted by the Appellate Bench of the Small Causes Court on 10/1/02 had elapsed, therefore, the petitioner made an application to the Appellate Bench for extension of the time. The said application was adjourned to 17/8/2004 for orders. It appears that the Appellate Bench of the Small Causes Court was of the view that since the High Court had disposed of the petitioner's writ petition, it was functus officio and could not pass any order. The petitioner has, therefore, filed the present civil application praying that 60 days' time granted by the Appellate Bench of the Small Causes Court be extended.

3. I have heard the learned counsel for the petitioner. He submitted that the petitioner is 80 years old. He was seriously ill and in the circumstances he

could not take prompt steps in the matter and hence there is a delay. The learned counsel submited that in the interest of justice the delay may be condoned.

4. The learned counsel for the defendant strenuously opposed this prayer. He submitted that 60 days time granted by the Small Causes Court on 10/1/02 expired in April, 2002. However, the petitioner did not take any steps and thereafter he filed the writ petition No. 3329 of 2002 after the period of 60 days had elapsed. On 24/6/02 this Court dismissed the said writ petition. Even thereafter no prompt steps were taken. It is only in April, 2004 that the petitioner has moved for extension of time. The petitioner is guilty of latches and hence this court should not grant him any relief.

5. It is true that the petitioner has not taken prompt steps but I am informed by the learned counsel for the petitioner that the petitioner is 80 years old and he was seriously ill. Though the learned counsel for the respondent is right that the petitioner has been grossly negligent, in my opinion, interest of justice demand that the time granted by the Small Causes Court on 10/1/02 should be extended. However, the petitioner should be saddled with some cost. Hence the following order:

> On the petitioner paying cost quantified at Rs.3,000/- to the respondent the time granted by the Small Causes Court by its order dated 10/1/02 to move the court under Order VII Rule

10 (2) A of the Code is extended by another 60 days from today. Payment of cost shall be condition precedent for extension of time.

Civil Application is disposed of in the aforestated terms.

Parties to act on authenticated copy of this order.

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